

ORIGINAL

NAME AND ADDRESS OF ATTORNEY

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FILED

DEC 14 2009

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY AKR DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TRIAL JUDGE The Hon. Janis L. Sammartino

RABBI S. BINYOMIN GINSBERG, as an
individual consumer, and on behalf of all others
similarly situated,

(Appellant/Appellee) Plaintiff)

vs)

NORTHWEST, INC., a Minnesota corporation,
and DELTA AIR LINES, INC., a Delaware
Corporation,

(Appellant/Appellee) Defendant)

COURT REPORTER N/A

CIVIL NO. 3:09-cv-00028 JLS (NLS)

NOTICE OF APPEAL (Civil)

Notice if hereby given that RABBI S. BINYOMIN GINSBERG

Plaintiff _____ Defendant above named, hereby appeals to the United States Court
of Appeals for the: (check appropriate box)

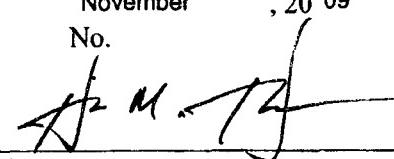
Ninth Circuit Federal Circuit

from the: (check appropriate box)

Final Judgment Order (describe)

entered in this proceeding on the 13 day of November , 20 09
Transcripts required Yes
Date civil complaint filed: 1/8/09 No.

Date: 12/14/09


Signature

CERTIFICATE OF SERVICE

Rabbi S. Binyomin Ginsberg vs. Northwest, Inc. and Delta Air Lines, Inc.
U.S. District Court, Southern Dist. of California, 3:09-cv-00028 JLS (NLS)

I, Harold Hewell, declare: that I am and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am employed in the County of San Diego, California, in which County the within-mentioned mailing/service occurred. My business mailing address is 105 West F Street, Suite 213, San Diego, California 92101. I served the following document(s):

NOTICE OF APPEAL (Civil)

[X] by e-mail transmission of copies of the above documents in .pdf format to the e-mail address of the parties below on December 14, 2009. No delivery errors were reported.

[] by CM/ECF notification at the time of filing.

[X] by placing the envelope for collection and mailing following our ordinary business practices on December 14, 2009. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. *[Signature]*

Executed on December 14, 2009, at San Diego, California.

/s/ Harold Hewell

Mailing List

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ATTORNEYS FOR DEFENDANTS

**Christopher G. Kelly
Judith R. Nemsick
Holland & Knight LLP
195 Broadway
New York , NY 10007
(212) 513-3264**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 S BINYOMIN GINSBERG, Plaintiff,
12 vs.
13 NORTHWEST, INC.; DELTA AIR LINES,
14 INC., Defendants.

CASE NO. 09-CV-28 JLS (NLS)

**ORDER: (1) DENYING
DEFENDANTS' MOTION TO
DISMISS WITH PREJUDICE, AND
(2) ENTERING FINAL
JUDGMENT IN FAVOR OF
DEFENDANTS**

(Doc. Nos. 27, 28, 30, 31)

Presently before the Court is Defendants' request for dismissal with prejudice of Plaintiff's breach of contract cause of action. (Doc. No. 28.) Also before the Court are Plaintiff's notices of intent to stand on his initial pleading.¹ (Doc. Nos. 27, 30, and 31.) Having considered all of these requests, the Court **DENIES** Defendants' request for dismissal with prejudice and enters final judgment in favor of Defendants.

The Court finds dismissal with prejudice of Plaintiff's contract claim inappropriate under the current circumstances. Although he failed to file his amended complaint within the time specified, Plaintiff has not engaged in the sort of inaction or disobedience of a court order that would merit the sanction of a Rule 41(b) dismissal. *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065 (9th Cir.

¹ Although these documents were actually a motion for interlocutory appeal, a request for voluntary dismissal, and a request for entry of final judgment, the Court construes them as a notice of intent to stand on his initial pleading.

1 2004). Instead, having failed to comply with the Court's order, the proper result in this case is that
2 Plaintiff is no longer free to amend his pleading.

3 Next, the Court construes all three of Plaintiff's filings as his notice that he intends to stand
4 on his initial pleading. "When the plaintiff timely responds with a formal notice of his intent not to
5 amend, the threatened dismissal merely ripens into a final, appealable judgment." *Id.* Although
6 Plaintiff's response here was neither timely nor clear, the Court finds that he has adequately expressed
7 his intent to stand on his initial pleading. Therefore, this matter is concluded and this Order shall
8 serve as the final judgment in favor of Defendants. The Clerk shall close the file.

9 IT IS HEREBY ORDERED:

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11 DATED: November 13, 2009

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Honorable Janis L. Sammartino
United States District Judge

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Notice of Appeal Notification Form

To: Clerk, U.S. Court of Appeals

Date: 12/15/2009

From: U.S. District Court, Southern District of California

Subject: New Appeals Case Information & Docket Fee Notification

Case Information

Case Title: S BINYOMIN GINSBERG, Rabbi, as an individual consumer, and on behalf of all others similarly situated v. NORTHWEST, INC, a Minnesota corporation and a wholly-owned subsidiary of Delta Air Lines, Inc; DELTA AIR LINES, INC., a Delaware corporation

U.S.D.C. No.: 09-cv-00028-JLS-NLS U.S.D.C. Judge: Janis L. Sammartino

Complaint/Indictment/Petition Filed: Complaint

Appealed Order Entered: 11/13/2009

Notice of Appeal Filed: 12/14/2009

Court Reporter: No court reporter

COA Status: Granted in full/part (appeal only) Denied (send clerk's file)

Docket Fee Notification

Docket Fee: Paid Not Paid No Fee Required

USA/GOV'T. APPEAL: Yes No

Date F/P granted (Show Date and Attach Copy of Order): _____

Was F/P Status Revoked? Yes No

Companion Case(s): (Please list consolidated cases, if applicable) _____

Counsel Information

Appellant Counsel:

Harold M Hewell
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Appellee Counsel: (continued)
Judith R. Nemsick
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New York, NY 10007
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Counsel Status: Retained Appointed Pro Se

Appointed by: _____
(Attach copy of order/minutes)

SERVICE LIST

Counsel for Appellant(s) and Appellee(s), as listed on the previous page, have been sent copies of the following items:

x	Transmittal to U.S.C.A. (Appellant and Appellee)
x	Case Information/Docketing Fee Notification Form (Appellant and Appellee)
x	Notice of Appeal (Appellant, Appellee, U.S. District Judge)
	Docket Entries (Appellant and Appellee)
x	Transcript Designation and Ordering Form (Appellant Only, mailed separately)
	Magistrate Judge's Report and Recommendation
	COA Order
	F/P Order
	Minute Order
x	Other: ORDER Denying Defendants' Motion to Dismiss with Prejudice and Entering Final Judgment in Favor of Defendants, entered 11/13/2009

Form Completed And Documents Served By U.S. District Court Deputy Clerk:

Angela Rowland

Deputy's Name

s/ Angela Rowland

Deputy's Signature

UNITED STATES DISTRICT COURT
Southern District Of California
Office Of The Clerk
880 Front Street, Room 4290
San Diego, California 92101-8900
Phone: (619) 557-5600
Fax: (619) 702-9900

W. Samuel Hamrick, Jr.
Clerk of Court

To: Clerk, U.S. Court of Appeals
P.O. Box 193939
San Francisco, CA 94119-3939
(via electronic transmission)

Re: **USCA No:**
USDC No: 09-cv-00028-JLS-NLS
Ginsberg v. Northwest, Inc et al

Clerk, U.S. Court of Appeals, enclosed herewith you will please find:

x	Notice of Appeal				
x	Case Information/Docket Fee Payment Notification Form				
	Original Clerk's Record in			set(s) of	volume(s)
	Reporter's transcripts in			set(s) of	volume(s)
	Lodgments in		envelope(s)	box(es)	folder(s)
	Judgment Order				
	Magistrate Judge's Report and Recommendation				
	F/P Order				
	COA Order				
x	ORDER Denying Defendants' Motion to Dismiss with Prejudice and Entering Final Judgment in Favor of Defendants, entered 11/13/2009				
x	Please acknowledge receipt				

Sincerely yours,

W. Samuel Hamrick, Jr.
Clerk of Court

s/ A. Rowland

By: _____
A. Rowland, **Deputy**

Date: 12/15/2009